

98TH CONGRESS
1ST SESSION

H. R. 4106

32

To amend title 18, United States Code, to regulate polygraph and other detection of deception examinations and prohibit certain practices with respect thereto for the purpose of protecting the privacy rights of employees and individuals seeking employment with employers engaged in any business or activity in or affecting interstate commerce while permitting such employers to use such examinations to protect their businesses and control property losses attributable to employee theft and other acts of misconduct.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 1983

Mr. DERRICK introduced the following bill; which was referred to the Committee on the Judiciary

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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) chapter 89 of title 18, United States Code, is

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- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That (a) chapter 89 of title 18, United States Code, is

1 amended by adding at the end thereof the following new
2 section:

3 **“§ 1822. Polygraph and other detection of deception ex-**
4 **aminations**

5 “(a) It shall be unlawful for any person to violate any
6 provision of subsection (b) in administering a polygraph or
7 other detection of deception examination on behalf of any em-
8 ployer engaged in any business or activity in or affecting in-
9 terstate commerce, or in using the results of any such exami-
10 nation so administered for the purpose of assisting such em-
11 ployer to determine whether to promote, demote, discipline
12 or dismiss an employee or hire an individual seeking employ-
13 ment.

14 “(b)(1) For purposes of subsection (a), no person who
15 administers a polygraph or other detection of deception ex-
16 amination shall inquire into, evaluate or report on the truth-
17 fulness or untruthfulness of an individual with respect to any
18 of the following matters:

19 “(A) any information, belief, or opinion held by
20 such individual about any matter involving religion or
21 about any religious organization with which such indi-
22 vidual may be affiliated,

23 “(B) any information, belief, or opinion held by
24 such individual about any matter involving race,

1 “(C) any information, belief, or opinion held by
2 such individual about any political matters or issues or
3 about any political organization with which such indi-
4 vidual may be affiliated,

5 “(D) any information, belief, or opinion held by
6 such individual about any matter involving labor orga-
7 nizations with which such individual may be affiliated,
8 or

9 “(E) unless sexual behavior is specifically related
10 to job performance, any matter relating to sexual be-
11 havior, or any sexual behavior of such individual.

12 “(2) For purposes of subsection (a), no person shall ad-
13 minister any polygraph or other detection of deception exami-
14 nation to any individual unless such person—

15 “(A) informs such individual that no Federal law
16 requires such examination,

17 “(B) obtains in writing the consent of such indi-
18 vidual to participate in such examination,

19 “(C) uses an instrument or device which records
20 continuously, visually, permanently, and simultaneously
21 indications of and changes in such individual's cardio-
22 vascular, respiratory, and galvanic skin response pat-
23 terns as minimum instrumentation standards, and bases
24 his or her evaluation or opinion of such individual's
25 truthfulness or untruthfulness at least upon changes in

1 the individual's physiological activity or reactivity in
2 the cardiovascular, respiratory and galvanic skin re-
3 sponse patterns of such individual. Such person may
4 use an instrument which, in addition, also records
5 other physiological patterns and may consider the addi-
6 tional physiological patterns in making his or her eval-
7 uation and rendering his or her opinion,

8 “(D) discusses or reviews with such individual,
9 before such examination begins, all subject matter or
10 matters on which he or she shall be asked questions
11 during the examination, and

12 “(E) provides such individual with an opportunity
13 to explain any changes in such individual's activity or
14 reactivity in his or her cardiovascular, respiratory and
15 galvanic skin response patterns, prior to making an
16 evaluation and rendering an opinion as to such individ-
17 ual's truthfulness or untruthfulness.

18 “(3) For purposes of subsection (a), no person who ad-
19 ministers a polygraph or other detection of deception exami-
20 nation shall—

21 “(A) refuse to provide any individual to whom an
22 examination is administered with a copy of any written
23 report or written recommendation based on the results
24 of such examination, and prepared for, or made availa-

1 ble to, the individual at whose request such examina-
2 tion is administered,

3 “(B) disclose such results, except—

4 “(i) to the individual examined, an individual
5 designated in writing by such individual examined,
6 or any individual at whose request such examina-
7 tion is administered, or

8 “(ii) to other polygraph examiners in private
9 consultation, all of whom will adhere to the re-
10 quirements of this subsection, or

11 “(iii) in any labor arbitration proceeding in
12 which the individual examined is a party, or

13 “(iv) in any disciplinary investigation or pro-
14 ceeding in which the person administering the ex-
15 amination is a party, or

16 “(v) in any official investigation by or official
17 proceeding of any judicial or other governmental
18 entity or as otherwise may be required by due
19 process of law;

20 “(C) intentionally prepare or make available any
21 misleading, biased, or falsified report or recommenda-
22 tion in connection with such examination, or

23 “(D) administer such examination surreptitiously
24 or without the knowledge and written consent of the
25 individual examined.

1 “(c) For purposes of this section—

2 “(1) the term ‘employer’ does not include any
3 governmental entity,

4 “(2) the term ‘polygraph or other detection of de-
5 ception examination’ means any examination adminis-
6 tered to an individual with any instrument or device for
7 the purpose of measuring or evaluating or attempting
8 to measure or evaluate the truthfulness or untruthful-
9 ness of such individual, and

10 “(3) the term ‘person’ shall have the meaning
11 given it in the sixth undesignated paragraph of section
12 1 of title 1, United States Code, except that such term
13 shall not include any officer or employee of any gov-
14 ernmental entity when such officer or employee admin-
15 isters a polygraph examination in the performance of
16 his official duties.

17 “(d) Whoever knowingly and willfully violates this sec-
18 tion shall be guilty of a misdemeanor and, upon conviction
19 thereof, shall be fined not more than \$1,000, imprisoned not
20 more than one year, or both.”.

21 (b) The analysis of sections for chapter 89 of title 18,
22 United States Code, is amended by adding at the end thereof
23 the following new item:

“1822. Polygraph and other detection of deception examination.”.

24 SEC. 2. Section 1822(a) of title 18, United States Code
25 (as added by the first section of this Act), shall not apply with

1 respect to any polygraph or other detection of deception ex-
2 amination administered before the effective date of the
3 amendments made by the first section of this Act.

4 SEC. 3. The amendments made by the first section of
5 this Act shall take effect thirty days after the date of the
6 enactment of this Act.

7 SEC. 4. The amendments made by the first section of
8 this Act shall supersede any and all State laws insofar as
9 they now or hereafter prohibit or restrict employers engaged
10 in any business or activity in or affecting interstate commerce
11 from using polygraph or other detection of deception exami-
12 nations for the purpose of determining whether to promote,
13 demote, discipline or dismiss an employee, or hire an individ-
14 ual seeking employment, provided nothing herein shall be
15 construed to impair the right of States to license, register,
16 certify or otherwise provide for the regulation, control or su-
17 pervision of polygraph examiners.

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